

Message

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**From:** Landin, David [dlandin@hunton.com]  
**Sent:** 1/9/2018 6:50:32 PM  
**To:** Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]  
**Subject:** FW: Cox

I have been reading the Court's decision on RCS

([www.cadc.uscourts.gov/internet/opinions.nsf/03C747A5AB141C90852581FE0055A642/\\$file/16-1105-1710179.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/03C747A5AB141C90852581FE0055A642/$file/16-1105-1710179.pdf)).

It seems to me that there are blatant errors of fact and confusions on basic science and statistics in the opinion that might suggest that our reasoning did not receive a careful reading. For example, on p10, the opinion states approvingly that "OSHA supported its selection of the PEL with studies showing that risks of lung cancer exist at 36 µg/m3 and 10 µg/m3 , levels lower than the PEL." This conflates estimated with actual levels -- a key point we have emphasized many times that seems to be simply ignored here. Later in that paragraph is a claim that "OSHA rejected Industry's argument because the contrary studies used non-reactive and poorly soluble particles—which silica is not—and therefore the "findings regarding" the particles "[cannot] be extrapolated to crystalline silica."" This looks almost as if the court holds that silica is not a poorly soluble particle. (I assume they must mean that that they do not consider it non-reactive, but the wording is not very clear.) That same page then goes on to say that "OSHA's no-threshold assumption is supported by substantial evidence." But the substantial evidence consists largely of refusing to distinguish between estimated and true exposures and using an "average cumulative exposure" metric (p. 14) that ignores errors and uncertainties in exposure (and hence in whether it is truly above a threshold). The NLRP3 inflammasome and the biological thresholds it implies make no appearance.

This Court appears to be of one mind with OSHA, and entirely disengaged from any critical challenges, in the sense that this opinion does not seem to be willing to acknowledge that estimated exposures contain errors and uncertainties and that they matter for figuring out true exposure-response relations. I feel that our cogent expositions of what is true and important have been disregarded, as they do not appear to have affected in the slightest the Court's understanding, reasoning, or findings. This is discouraging.

I feel real pressure now to get the NLRP3 story for RCS out there quickly: people need to understand how things work and use that knowledge so that we don't squander zillions of resources achieving nothing useful.

Despite these sobering reflections, I wish you and yours great joy in the New Year, Dale!

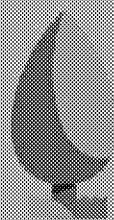
Best,

-- Tony

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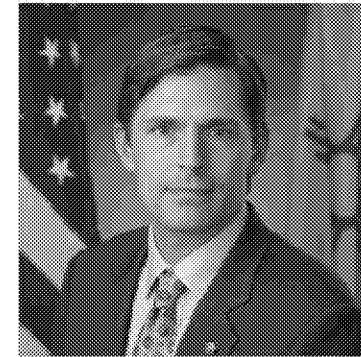
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\* Previous Vento Award Recipient

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- 2005: Senator Bob Graham, Florida
- 2004: Congressman John Lewis, Georgia
- 2003: Congresswoman Connie Morella, Maryland
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- 2001: Lt. Governor Lowell Thomas, Jr., Alaska



**Senator Martin Heinrich**

Representing New Mexico since 2013, Senator Heinrich serves on the Senate Committee on Energy and Natural Resources and the Subcommittee on National Parks. He also serves on the Senate Committee on Armed Services, the Senate Select Committee on Intelligence, and the U.S. Congress Joint Economic Committee.

Senator Heinrich's numerous accomplishments to protect our public lands include his work to help create the Columbine-Hondo Wilderness area, expand public access to the Valles Caldera National Preserve, and establish the Manhattan Project National Historical Park. He also championed the creation of the Rio Grande del Norte National Monument and Organ Mountains-Desert Peaks National Monument.

His dedicated bipartisan efforts also help to connect families and kids to the great outdoors as demonstrated by his work as co-chair of the Senate Outdoor Recreation Caucus, sponsor of the Every Kid Outdoors Act and co-sponsor of the annual Kids to Parks Day Senate Resolution.

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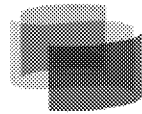
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- Invitation to attend NPT Board Dinner

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- Recognition in all materials and event signage
- 10 tickets to reception
- VIP Photo Opportunity
- Company/major donor to be recognized at reception
- Company link on NPT website, with opportunity to use NPT logo for one year
- Two feature articles in NPT e-newsletter and/or website
- Commemorative NPT item recognizing company/major donor support
- Invitation to attend NPT Board Dinner

### White Sands National Monument - \$15,000

- Recognition in materials and event signage
- 8 tickets to reception
- VIP Photo Opportunity
- Company/major donor to be recognized at reception
- Company link on NPT website, with opportunity to use NPT logo for one year
- Commemorative NPT item recognizing company/major donor support
- One feature article in NPT e-newsletter and/or website

### Valles Caldera National Preserve - \$10,000

- Recognition in materials and event signage
- 6 tickets to reception
- VIP Photo Opportunity
- Company/major donor to be recognized at reception
- Company link on NPT website, with opportunity to use NPT logo for one year
- Commemorative NPT item recognizing company/major donor support
- One feature article in NPT e-newsletter and/or website

### Chaco Culture National Historical Park - \$5,000

- Recognition in materials and event signage
- 4 tickets to reception
- Company/major donor listed on NPT website

### El Malpais National Monument - \$2,500

- Recognition in materials and event signage
- 3 tickets to reception

### Manhattan Project National Historical Park - \$1,000

- 2 tickets to reception
- Company/major donor to be recognized on event signage

Individual Ticket: \$250

Message

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**From:** Landin, David [dlandin@hunton.com]  
**Sent:** 6/21/2018 4:27:05 PM  
**To:** Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]  
**Subject:** Various

Hope that you are well. Would like to catch up on asbestos problem formulation document; systematic review document; transparency rule with you and whomever you suggest. NSSGA wants to be supportive.

Thanks,  
David.

Message

**From:** Gergana Vasileva [GVasileva@thecwcgroup.com]  
**Sent:** 7/3/2018 11:58:20 AM  
**To:** Brian Jones [bjones@mjb Bradley.com]; Martha Yolanda Herrera Zapata [martha.herrera@ecopetrol.com.co]; Adams, Melissa E [MelissaAdams@washgas.com]; Ryan, Vanessa A [vanessa.ryan@chevron.com]; Hyde, Richard [RIHYDE@southernco.com]; Gelpi Leonardo [Leonardo.Gelpi@eni.com]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]  
**CC:** Pryor, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee9b6e9642c041388c84a73046c1e025-Pryor, Just]; Sarah Sandison [ssandison@thecwcgroup.com]; Sawyer, Cheryl [sawj@chevron.com]; DeLuca, Isabel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b021c30cbee4637a7c7ca683e5e044a-IDELUCA]  
**Subject:** 27th World Gas Conference - Post Conference Materials  
**Attachments:** ATT00001.txt

Dear all,

It was a pleasure for me to meet you all in person! Thank you once again for your participation in the 27th World Gas Conference and I hope you all enjoyed your time in Washington DC.

I just wanted to check if you all have access to the conference materials. If you have any problems to access these or if you have any other questions, please do not hesitate to contact me!

Wish you all the best in everything you do!

Best regards,

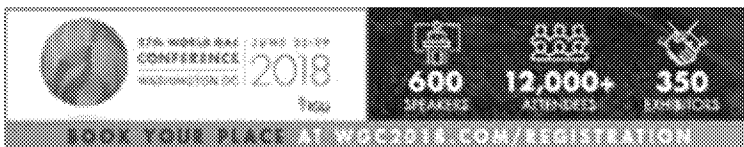
Gergana Vasileva

Speaker and Program Assistant, WGC 2018

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**From:** Gergana Vasileva  
**Sent:** 23 June 2018 15:17  
**To:** Brian Jones; Martha Yolanda Herrera Zapata; Adams, Melissa E; Ryan, Vanessa A; Hyde, Richard; Gelpi Leonardo; Wehrum.Bill@epa.gov  
**Cc:** pryor.justin@epa.gov; Sarah Sandison; Sawyer, Cheryl; DeLuca, Isabel  
**Subject:** RE: 27th World Gas Conference - My on-sitecontact number

Dear all,

As the 27th World Gas Conference is so close now, I hope your preparation is going well.

Please do not hesitate to contact me on my US number Ex. 6 if you need any assistance.

I will be looking forward to meet you next week!

Best wishes,  
Gergana

---

**From:** Brian Jones [mailto:[bjones@mjbradley.com](mailto:bjones@mjbradley.com)]

**Sent:** 15 June 2018 10:06

**To:** Gergana Vasileva; Martha Yolanda Herrera Zapata; Adams, Melissa E; Ryan, Vanessa A; Hyde, Richard; Gelpi Leonardo; Wehrum.Bill@epa.gov

**Cc:** pryor.justin@epa.gov; Sarah Sandison; Sawyer, Cheryl; DeLuca, Isabel

**Subject:** RE: 27th World Gas Conference - Moderator Introduction - The Role of Voluntary Action in Methane Management (Friday June 28, 2018)

Thank you Gergana!

Hi Everyone,

I am looking forward to the WGC and our panel on the Friday June 29.

My contact information is below. Please contact me direct with any questions you may have.

I will reach out individually to each of you to discuss your presentation. If we can find a time to have a call together, we can do that as well.

Thanks,

Brian

---

Brian M. Jones  
Senior Vice President  
M.J. Bradley & Associates, LLC  
47 Junction Square Drive  
Concord, MA 01742  
Office: Ex. 6  
[www.mjbradley.com](http://www.mjbradley.com)



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**From:** Gergana Vasileva [mailto:[GVasileva@thecwcgroup.com](mailto:GVasileva@thecwcgroup.com)]

**Sent:** Friday, June 15, 2018 9:46 AM

**To:** Martha Yolanda Herrera Zapata <[martha.herrera@ecopetrol.com.co](mailto:martha.herrera@ecopetrol.com.co)>; Adams, Melissa E <[MelissaAdams@washgas.com](mailto:MelissaAdams@washgas.com)>; Ryan, Vanessa A <[vanessa.ryan@chevron.com](mailto:vanessa.ryan@chevron.com)>; Hyde, Richard <[RIHYDE@southernco.com](mailto:RIHYDE@southernco.com)>; Gelpi Leonardo <[Leonardo.Gelpi@eni.com](mailto:Leonardo.Gelpi@eni.com)>; Wehrum.Bill@epa.gov; Brian Jones <[bjones@mjbradley.com](mailto:bjones@mjbradley.com)>

**Cc:** pryor.justin@epa.gov; Sarah Sandison <[ssandison@thecwcgroup.com](mailto:ssandison@thecwcgroup.com)>; Sawyer, Cheryl <[sawj@chevron.com](mailto:sawj@chevron.com)>; DeLuca, Isabel <[DeLuca.Isabel@epa.gov](mailto:DeLuca.Isabel@epa.gov)>

**Subject:** RE: 27th World Gas Conference - Moderator Introduction - The Role of Voluntary Action in Methane Management (Friday June 28, 2018)



Dear all,

It was just brought to my attention that Brian was not included in the email below. Please accept my apologies.

Please find the biographies attached.

Best wishes,  
Gergana

---

**From:** Gergana Vasileva  
**Sent:** 05 June 2018 16:32  
**To:** 'Martha Yolanda Herrera Zapata'; 'Adams, Melissa E'; 'Ryan, Vanessa A'; 'Hyde, Richard'; 'Gelpi Leonardo'; 'Wehrum.Bill@epa.gov'  
**Cc:** [pryor.justin@epa.gov](mailto:pryor.justin@epa.gov); Sarah Sandison; Sawyer, Cheryl; 'DeLuca, Isabel'  
**Subject:** 27th World Gas Conference - Moderator Introduction - The Role of Voluntary Action in Methane Management (Friday June 28, 2018)

Dear all,

In anticipation of the upcoming 27<sup>th</sup> World Gas Conference, please allow me to introduce **Brian M. Jones**, Senior Vice President, **M.J. Bradley & Associates, LLC** and the **moderator** of the Workshop session **The Role of Voluntary Action in Methane Management** which will take place on **Friday June 29, 2018** from **10:20 AM – 11:40 AM**.

The Workshop session is **1 hour 20 minutes in duration**. The session will commence with Brian introducing the session topic and each speaker. Each speaker will then have **8-10 minutes to deliver their presentation** and then return to their seat on stage. The session will conclude with audience Q&A.

The session will be made up of:

- ***Opening Remarks: Bill Wehrum, Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency (EPA)***
- ***Leonardo Gelpi, Climate Change / GHG Management Manager, Eni Spa***
- ***Melissa Adams, Chief Corporate Social Responsibility Officer, WGL Holdings/Washington Gas***
- ***Richard Hyde, Director External Affairs, Southern Company Gas***
- ***Vanessa Ryan, Senior Advisor, Shale Issues, Chevron Corporation***
- ***Martha Yolanda Herrera Zapata, Project Engineer, Innovation and Technology Center (ICP- Colombian Petroleum Institute), Ecopetrol.***

***Please find the attached copies of all speaker biographies for your reference.***

If you have any questions regarding the points for discussion in the panel please do not hesitate to contact Brian.

Should you also wish to discuss the content further in a phone call, please do let me know and I will be more than happy to assist in setting this up.

I look forward to meeting you at the conference.

Best wishes,  
Gergana

Gergana Vasileva  
Speaker and Program Assistant, WGC 2018

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Message

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**From:** Matthew Todd [ToddM@api.org]  
**Sent:** 7/2/2018 4:22:41 PM  
**To:** Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]  
**CC:** Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfd6b0fea4b998-Traylor, Pa]; Sullivan, Tim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8eee68eb50a74759990afe170748b9e0-Tsulliva]; Williams, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=252151bed38547009f6403c9aae71e6f-Williams, C]  
**Subject:** API Comments on EPA's New Owner Audit Program for Oil and Gas Production  
**Attachments:** 2018 07 02 API Comments on EPA New Owner Audit Program Final.pdf

Dear Ms. Chapman:

API respectfully submits the attached letter in response to the U.S. EPA's request for comments on its proposed changes to the 2000 policy titled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" for new owners of oil and natural gas exploration and production facilities and, in particular, the Agency's Draft Standard Audit Policy Agreement. API believes that the Audit Policy can be an important tool in furtherance of environmental compliance and hope this feedback will lead to a final program that provides a more flexible approach to eligibility and administration.

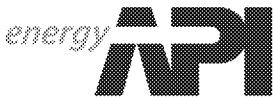
Please do not hesitate to contact me with any questions regarding the content of this submittal. We look forward to reviewing the revised draft agreement as discussed during the face-to-face meeting last Thursday, June 28<sup>th</sup>.

Regards,

Matt

Matthew Todd  
API

Ex. 6



**Matthew Todd**  
Senior Policy Advisor

Regulatory and Scientific  
Affairs

1220 L Street, NW  
Washington, DC 20005-4070  
USA  
Telephone 202-682-8319  
Email [toddm@api.org](mailto:toddm@api.org)  
[www.api.org](http://www.api.org)

July 2, 2018

**Via Electronic Mail ([Chapman.apple@epa.gov](mailto:Chapman.apple@epa.gov))**

Apple Chapman  
Deputy Director, Air Enforcement Division  
U.S. Environmental Protection Agency  
Mail Code 2242A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: Comments of the American Petroleum Institute in Response to the Environmental Protection Agency's Draft Audit Policy Agreement for New Owners of Oil and Natural Gas Exploration and Production Facilities.

Dear Deputy Director Chapman:

This letter provides comments from the American Petroleum Institute ("API") in response to the U.S. Environmental Protection Agency's ("EPA's" or "the Agency's") request for comments on its proposed changes to EPA's 2000 policy titled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (the "Audit Policy") for new owners of oil and natural gas exploration and production facilities and, in particular, the Agency's Draft Standard Audit Policy Agreement ("Draft Agreement"). API believes that the Audit Policy is an important tool in furtherance of environmental compliance and appreciates EPA's interest in expanding its use by proposing to adopt a more flexible approach to eligibility and administration.

EPA is correct that the Audit Policy has traditionally been underutilized by new owners of oil and natural gas exploration and production facilities and has correctly identified many of the reasons why new owners of oil and natural gas exploration and production facilities have not used the Audit Policy as extensively as other industries (e.g., infeasibility of deadlines, regulatory complexity). API is concerned, however, that the approach embodied in EPA's Draft Agreement may not only fail to address these issues, it could potentially create new barriers to use of the Audit

Policy. API raised these concerns and questions with EPA in advance of, and during, EPA's stakeholder meeting on June 28, 2018. We are reiterating these concerns here in sincere hope that we will be able to work with EPA to avoid the inadvertent imposition of additional barriers to use of the Audit Policy. API and its members are committed to helping EPA expand use of the Audit Policy among new owners of oil and natural gas exploration and production facilities.

## **I. CONCERNS WITH EPA'S PROPOSED APPROACH**

API has two fundamental concerns with EPA's proposed changes to the Audit Policy. Our first concern relates to Draft Policy Agreement ("Attachment B"), which appears to require companies seeking penalty mitigation through the Audit Policy to first conduct analyses and corrective actions that are not based on any federal statutory or regulatory requirements. The Attachment B requirements are, in fact, significantly more stringent than what EPA requires under regulations promulgated pursuant to the Clean Air Act ("CAA" or "the Act").

Our second concern is with EPA's apparent intent to require new owners to navigate EPA's audit process in states that operate their own audit programs pursuant to authority delegated under the CAA. Rather than deferring to states authorized to administer the Act, EPA's proposed approach suggests that EPA will impose its own Audit Policy requirements on top of any state audit program requirements. API is concerned that this approach would lead to duplication, inconsistency, and confusion.

More fundamentally, both of these proposed changes appear more likely to further curtail – rather than expand – use of the Audit Policy by new owners of oil and natural gas exploration and production facilities. In order to help EPA avoid such an undesirable outcome, in the subsections below, we provide detailed explanations of API's concerns and recommended changes.

### **a. Attachment B Creates a Barrier to Use of the Audit Policy**

EPA's 2000 Audit Policy encourages companies to voluntarily discover potential violations through self-auditing, disclose them to the EPA, promptly correct them, and prevent their future reoccurrence. In exchange, companies receive a reduction or elimination of civil penalties and a determination by EPA not to recommend criminal prosecution to the U.S. Department of Justice.

In order to obtain penalty mitigation through the audit policy, nine conditions must be met: (1) systematic discovery through an internal or external audit or compliance management program; (2) voluntary discovery of the violation; (3) prompt disclosure to EPA within 21 days of discovery; (4) independent discovery and disclosure; (5) correction and remediation within 60 days from the date of discovery; (6) prevention of recurrence of the violation; (7) the violations are not repeat violations; (8) the violations do not result in serious actual harm, an imminent and substantial



endangerment, and do not violate an administrative or judicial order or consent agreement; and (9) cooperation by the disclosing entity.

In 2008, EPA tailored its approach to Audit Policy disclosures for “new owners.” EPA recognized that environmental audits frequently occur as part of a transfer of ownership over a property or facility. New owners, however, did not sufficiently avail themselves of the program because of uncertainty over EPA’s definition of “new owners,” apparent inapplicability of some of the policy’s conditions, and deadlines that were too short to be used in the context of a transaction. EPA’s 2008 Interim Approach to Applying the Audit Policy to New Owners (“Interim Policy”) attempted to address these issues by clarifying the eligibility for treatment as a new facility and by clarifying how four of nine Audit Policy eligibility preconditions were to be applied to new owners.<sup>1</sup>

The Interim Policy’s specific changes to the Audit Policy’s eligibility conditions are not relevant to these comments. What is relevant, however, is that the Interim Policy did not change the fundamental structure of the Audit Policy. Under either the original 2000 Audit Policy or the 2008 Interim Policy, companies are required to discover violations through self-auditing, disclose them to the EPA, promptly correct them, and prevent their future reoccurrence. In order to identify potential violations, the participating company first identifies the standards and requirements applicable to the subject facility and then examines the facility and the company’s operation of the facility to assess whether those standards and requirements have been met.

The Draft Agreement, on the other hand, would fundamentally change the structure of the Audit Policy by requiring auditing, disclosure, and corrective actions regardless of whether the company is in violation of any federal regulation under the CAA. To be perfectly clear, this approach would saddle new owners of oil and natural gas exploration and production facilities with an entirely new and onerous requirement in order to use the Audit Policy. Under proposed Attachment B, it would no longer be sufficient for new owners to identify, disclose, correct, and prevent recurrence of “specific violations.”<sup>2</sup> Instead, Attachment B would require new owners to conduct modeling, install equipment, and adopt operational and design changes even where the design and operation of the equipment complies with the New Source Performance Standards (“NSPS”) and National Emissions Standards for Hazardous Air Pollutants (“NESHAPs”) EPA promulgated for that equipment.

Indeed, Attachment B seems to provide a framework for assessing the presence of emissions and the efficacy of emissions controls without identifying the applicable standards for either. In doing

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<sup>1</sup> 73 Fed. Reg. 44,991 (August 1, 2008).

<sup>2</sup> See #4 in Audit Policy Interpretive Guidance (Jan. 1997) at <https://www.epa.gov/sites/production/files/documents/audpolintepgui-mem.pdf>

so, Attachment B seemingly creates an entirely new standard of compliance that does not bear any relationship to any federal statutory or regulatory requirement applicable to oil and natural gas exploration and production facilities. Instead, the Draft Agreement appears to require participating companies to conduct assessments and corrective actions that are required only under certain state regulations, and/or have been compelled in EPA consent decrees alleging subjective “general duty” violations under CAA Section 112(r)(1). Such assessments and corrective actions may be appropriate in specific states or in certain fact-specific circumstances, but it is not appropriate to require them on an industry-wide basis. While API recognizes that EPA is not attempting to craft new non-regulatory compliance standards for oil and natural gas exploration and production facilities, we remain concerned that Attachment B seems to provide a new industry-wide measurement of compliance that far exceeds what is required under the CAA or EPA’s regulations under the CAA.

API also recognizes that the Draft Agreement is designed to provide model language that can be tailored by participating companies and the Agency as they negotiate the provisions of specific audit agreements. Nevertheless, given the Agency’s superior leverage in negotiating an audit agreement with a company concerned about potential noncompliance, API remains concerned that putative participants in the Audit Program would not be able to negotiate away EPA’s default requirements. Again, API does not believe that EPA is attempting to use the Draft Agreement to introduce a backdoor regulation on the upstream oil and natural gas industry. We do, however, have significant questions about the propriety of assessing compliance based on standards that exceed and are entirely distinct from that which EPA has required in regulations developed through notice-and-comment rulemaking.

The Audit Policy is intended to provide incentives to voluntarily identify and disclose violations of statutory and regulatory requirements. Structuring the Audit Program such that noncompliance with voluntary standards, individual state requirements, subjective general duties, or the terms of a single company’s consent agreement are considered “violations,” however, creates an intensely problematic implication that EPA is creating a new, more stringent compliance standard through enforcement leverage.

*i. Questions About Attachment B*

As we have elsewhere stated, API is committed to working with EPA to better understand and improve the Agency’s proposed approach. In order to hopefully continue our dialogue with EPA, API is herein identifying the following important questions:

- Why did EPA not base Attachment B on existing federal regulatory requirements?

- Why does EPA believe that the analyses and corrective actions outlined in Attachment B should be required to demonstrate compliance and receive penalty mitigation?
- With what regulation/requirement does Attachment B attempt to measure compliance?
- Does Attachment B reflect an effort to treat generalized and subjective requirements under the CAA Section 112(r)(1) as specific regulatory comments?
- Would Attachment B be used in an enforcement action to demonstrate either an industry-recognized “good air pollution control practice” or a standard necessary to prevent or minimize hazards?
- Is Attachment B intended to help protect companies from future enforcement actions alleging noncompliance with generalized duties under CAA Section 112(r)(1) or otherwise?
- In what way does Attachment B promote EPA’s stated goal of expanding use of the Audit Policy new owners in the oil and natural gas exploration and production facilities?
- Which precise types of violations must be corrected in 60-days and which are subject to a negotiated schedule?

ii. Recommendation for Addressing Concerns with Attachment B

Attachment B imposes assessment and corrective action requirements that bear no relationship to federal regulations promulgated under the CAA. As such, we recommend that EPA decline to finalize Attachment B and refrain from requiring new owners of oil and natural gas exploration and production facilities to undertake non-regulatory measures in order to avail themselves of potential penalty mitigation under the Audit Policy.

We do not believe that new owners of oil and natural gas exploration and production facilities have underutilized the Audit Policy based on difficulties in identifying the federal regulatory requirements on which to assess their compliance. These requirements are found within a handful of NSPS and NESHAPs and readily identifiable. Identifying them in a model agreement does not save time or ease administration of the Audit Program and would only lead to confusion. To the extent that regulatory applicability becomes complex, that complexity is largely driven by differences in regulations based on jurisdiction or local air quality. This variability is part of the CAA and is not an issue that can, or should, be addressed through the Audit Policy. As such, we do not believe that EPA should provide a new draft agreement to replace Attachment B.

If, however, EPA is committed to providing an amended Attachment B, the Agency should base that document exclusively on federal CAA regulations promulgated for those sources. EPA’s

proposed amendments to the National Oil and Natural Gas Federal Implementation Plan (“FIP”) for Indian Country provides a comprehensive list of those requirements.<sup>3</sup> We have reproduced the relevant table from the preamble for those proposed FIP amendments.

| <b>40 CFR part and subpart</b>       | <b>Title of subpart</b>                                                                                                                                                                                 | <b>Potentially affected sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector</b> |
|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>40 CFR part 63, subpart DDDDD</u> | National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters                                                       | Process heaters                                                                                                                                 |
| <u>40 CFR part 63, subpart ZZZZ</u>  | Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines                                                                         | Reciprocating Internal Combustion Engines                                                                                                       |
| <u>40 CFR part 60, subpart IIII</u>  | Standards of Performance for Stationary Compression Ignition Internal Combustion Engines                                                                                                                | Compression Ignition Internal Combustion Engines                                                                                                |
| <u>40 CFR part 60, subpart JJJJ</u>  | Standards of Performance for Stationary Spark Ignition Internal Combustion Engines                                                                                                                      | Spark Ignition Internal Combustion Engines                                                                                                      |
| <u>40 CFR part 60, subpart Kb</u>    | Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984 | Fuel Storage Tanks                                                                                                                              |

<sup>3</sup> 83 Fed. Reg. 20,775 (May 8, 2018).

| 40 CFR part and subpart              | Title of subpart                                                                                                                                             | Potentially affected sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector                                                                                          |
|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>40 CFR part 60, subpart OOOOa</u> | Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015 | Storage Vessels, Pneumatic Controllers, Compressors (Reciprocating and Centrifugal), Hydraulically Fractured Oil and Natural Gas Well Completions, Pneumatic Pumps and Fugitive Emissions from Well Sites and Compressor Stations |
| <u>40 CFR part 63, subpart HH</u>    | National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities                                                      | Glycol Dehydrators                                                                                                                                                                                                                |
| <u>40 CFR part 60, subpart KKKK</u>  | Standards of Performance for New Stationary Combustion Turbines                                                                                              | Combustion Turbines                                                                                                                                                                                                               |

**b. EPA’s Proposed Approach May Undermine Cooperative Federalism and Lead to Duplication and Inefficiency**

As noted above, API does not believe that the one-size-fits-all default language in Attachment B appropriately measures compliance with federal CAA regulations applicable to sources at oil and natural gas exploration and production facilities. We are also concerned however, that this approach would unnecessarily intrude into state regulatory programs and the states’ own measures of compliance under state audit programs or otherwise. In particular, the Draft Agreement appears to mirror the Colorado Air Pollution Control Division’s (“CAPCD’s”) Storage Tank and Vapor Control Systems Guidelines.<sup>4</sup> Although CAPCD uses these guidelines to assess compliance with Colorado Regulation Number 7, they remain voluntary guidelines. It is inappropriate to convert voluntary guidelines into mandatory requirements in order to demonstrate compliance and obtain

<sup>4</sup> [https://www.colorado.gov/pacific/sites/default/files/041918\\_StorageTank-presentation.pdf](https://www.colorado.gov/pacific/sites/default/files/041918_StorageTank-presentation.pdf)

penalty mitigation, and it is particularly inappropriate to impose these requirements outside of Colorado.

Moreover, many states operate their own audit programs offering penalty mitigation for companies that voluntarily discover and disclose potential violations of air regulations. These states operate their audit programs pursuant to authority delegated to them by EPA under the CAA. Given this delegated authority, we are concerned that EPA intends to require new owners to navigate EPA's audit process even in states that operate their own audit programs. Rather than affirmatively deferring to states with audit programs authorized under the CAA, the Draft Agreement states that "a company may choose to enter into a parallel audit agreement with a state that has a state audit policy." This language, while brief, suggests that EPA will impose its own Audit Policy requirements on top of any state audit program requirements. Such an approach would certainly not improve the efficiency or expand the use of the Audit Policy among new owners of oil and natural gas exploration and production facilities. To the contrary, this approach would likely lead to duplication, inconsistency, redundancy, and confusion.

As EPA has elsewhere recognized, states are effective stewards of environmental protection and, as the primary issuers and enforcers of air permits, are often in the best position to assess compliance. Rather than imposing the Agency's own prescriptive audit agreement requirements, EPA should view compliance with state audit programs as compliance with EPA's audit requirements. EPA should also decline to impose penalties and offer the same assurances against future enforcement to companies utilizing state audit programs as it would under its own program. Doing so is well within EPA's enforcement discretion and fully consistent with the Agency's obligation to defer to states that appropriately exercise their enforcement authority.<sup>5</sup> Failure to do so, on the other hand, risks further disincentivizing use of the Audit Policy as companies will face the prospect of navigating state audit programs alongside new proscriptive federal requirements that differ not only from state regulations, but from federal regulations as well.

*i. Recommended Approach in States with Audit Programs*

EPA's Audit Policy should yield to state audit policies in order to avoid duplication, inefficiency, and inconsistency. As such, API recommends that EPA amend the Draft Agreement to include express language directing that, if the company is proceeding under a state audit program, EPA will not require the company to navigate EPA's Audit Program as well. Any audit, corrective action, disclosure, or agreement made pursuant to a state audit program should automatically be deemed sufficient by EPA. EPA should also amend the Draft Agreement to explicitly disclaim

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<sup>5</sup> See January 22, 2018 memorandum from Susan Parker Bodine to Regional Administrators; "Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States."

that the Agency will not second-guess state audit policy procedures or outcomes and that EPA will not impose penalties or requirements different from, or in addition to, that which is agreed to by the state. In order to improve the efficiency of the Audit Policy and promote cooperative federalism, EPA should provide the company the same protection from enforcement for disclosed violations that the state provides.

## **II. ADDITIONAL RECOMMENDATIONS**

While API has significant concerns with the Agency's proposed approach to expanding use of the Audit Policy among new owners of oil and natural gas exploration and production facilities, we appreciate EPA's recognition of this problem and support EPA's interest in addressing it. Transactions in the upstream oil and natural gas industry are quite different than transactions involving manufacturing facilities or other industries that utilize the Audit Policy more frequently. Transactions involving manufacturing facilities are much more focused on the infrastructure and equipment, unlike upstream oil and natural gas transactions, the value of which is driven by acreage, reserves, and development rights. To be sure, large amounts of equipment and infrastructure often convey with an oil and natural gas transaction, but unlike a manufacturing entity, the equipment and infrastructure is typically comprised of a large number of smaller sources spread over a large geographic area - often in areas that may be difficult to reach at certain times of the year.

These differences are the main reason new owners of oil and natural gas exploration and production facilities do not use the Audit Policy as extensively as new owners of manufacturing or other industrial facilities. To utilize the Audit Policy, a new owner of a manufacturing facility must assess stationary sources and other regulated equipment that is typically located in one or a few locations within reasonable proximity of each other. Often those sources were constructed and are operated under permits that identify specific emission limits, operating parameters, and maintenance, monitoring, recordkeeping, and reporting requirements. In contrast, a new owner of oil and natural gas exploration and production facilities wishing to use the Audit Policy must often inventory hundreds of individual pieces of equipment over a vast area. Some of this equipment remains stationary, but often equipment used in oil and natural gas exploration and production moves from site to site or is swapped out from one site to another. Some of this equipment may be individually permitted under Title V, thereby providing new owners a discrete list of emission limits and requirements from which to assess compliance. Much of the smaller sources, however, are not individually permitted under Title V. This is not to say that the equipment is unregulated. As noted in Subsection I.a.ii. above, these sources are extensively regulated and, to the consternation of new owners, the regulatory requirements applicable to these sources can change significantly depending on location.



In proposing this approach, it is clear that EPA understands this complexity and recognizes it as an impediment to utilization of the Audit Policy among new owners of oil and natural gas exploration and production facilities. EPA's Draft Agreement seemingly attempted to simplify the multijurisdictional regulatory complexity by proposing to adopt audit requirements that are so stringent they could be applied anywhere. This complexity, however, is inherent in, and essential to, the CAA's multijurisdictional and air quality-based approach to regulation.

New owners of oil and natural gas production facilities do not want the Audit Policy to be simplified by adopting a single, excessively stringent measure of compliance. Adopting the most aggressive requirements imposed by any state or compelled through a consent decree is not an appropriate means of mitigating the complex multijurisdictional approach required by the CAA.

Rather than adopting a one-size-fits-all approach to remove the regulatory complexity, EPA should provide new owners of oil and natural gas facilities more time to identify, disclose, and correct violations. The Draft Agreement provides a framework for new owners to negotiate with EPA to establish manageable timeframes. This approach is helpful and reflects the flexible approach necessitated by the highly varied nature of transactions in the upstream oil and natural gas facility. This approach, however, does not provide new owners any certainty that they will actually be able to negotiate workable deadlines with EPA. Uncertainty over whether an owner will be able to timely complete the elements required by the Audit Policy could continue to undermine its use among new owners of oil and natural gas exploration and production facilities.

API therefore recommends that EPA balance the need for both flexibility and certainty by establishing certain minimum default deadlines that would apply to new owners of oil and natural gas exploration and production facilities. New owners would then be assured of some reasonable minimum timeframe for conducting audits, disclosures, and corrective actions but would remain free to negotiate with EPA to extend those deadlines. We would also recommend that new owners are allowed a period of time following acquisition to assess the site(s) and their operation to determine an appropriate period to evaluate the compliance status. Because EPA recognizes the variability and complexity in these transactions, the Draft Agreement should continue to direct that EPA will not unreasonably deny requests for longer deadlines.

### **III. CONCLUSION**

Once again, API appreciates the opportunity to provide these initial questions and comments, and further appreciates the opportunity to supplement these comments after EPA makes more information available. API is also grateful that EPA is meaningfully exploring opportunities to provide the upstream oil and natural gas industry compliance assistance through a more flexible application of the Audit Policy. While we have concerns with EPA's proposed approach, we are

glad to learn that the Agency is committed to addressing industry concerns. If you have questions or wish to discuss further, please feel free to contact me at [toddm@api.org](mailto:toddm@api.org) or 202.682.8319.

Sincerely,

Matthew Todd

Cc: Susan Bodine, EPA  
Bill Wehrum, EPA  
Patrick Traylor, EPA  
Tim Sullivan, EPA  
Christopher Williams, EPA

Message

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**From:** Gergana Vasileva [GVasileva@thecwcgroup.com]  
**Sent:** 6/5/2018 3:32:28 PM  
**To:** Martha Yolanda Herrera Zapata [martha.herrera@ecopetrol.com.co]; Adams, Melissa E [MelissaAdams@washgas.com]; Ryan, Vanessa A [vanessa.ryan@chevron.com]; Hyde, Richard [RIHYDE@southernco.com]; Gelpi Leonardo [Leonardo.Gelpi@eni.com]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]  
**CC:** Pryor, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee9b6e9642c041388c84a73046c1e025-Pryor, Just]; Sarah Sandison [ssandison@thecwcgroup.com]; Sawyer, Cheryl [sawj@chevron.com]; DeLuca, Isabel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b021c30cbee4637a7c7ca683e5e044a-IDELUCA]  
**Subject:** 27th World Gas Conference - Moderator Introduction - The Role of Voluntary Action in Methane Management (Friday June 28, 2018)  
**Attachments:** ATT00001.txt; WGC 2018 Workshop Speakers.pdf

Dear all,

In anticipation of the upcoming 27<sup>th</sup> World Gas Conference, please allow me to introduce **Brian M. Jones**, Senior Vice President, **M.J. Bradley & Associates, LLC** and the **moderator** of the Workshop session **The Role of Voluntary Action in Methane Management** which will take place on **Friday June 29, 2018** from **10:20 AM – 11:40 AM**.

The Workshop session is **1 hour 20 minutes in duration**. The session will commence with Brian introducing the session topic and each speaker. Each speaker will then have **8-10 minutes to deliver their presentation** and then return to their seat on stage. The session will conclude with audience Q&A.

The session will be made up of:

- **Opening Remarks: Bill Wehrum**, Assistant Administrator, Office of Air and Radiation, **U.S. Environmental Protection Agency (EPA)**
- **Leonardo Gelpi**, Climate Change / GHG Management Manager, **Eni Spa**
- **Melissa Adams**, Chief Corporate Social Responsibility Officer, **WGL Holdings/Washington Gas**
- **Richard Hyde**, Director External Affairs, **Southern Company Gas**
- **Vanessa Ryan**, Senior Advisor, Shale Issues, **Chevron Corporation**
- **Martha Yolanda Herrera Zapata**, Project Engineer, Innovation and Technology Center (ICP- Colombian Petroleum Institute), **Ecopetrol**.

**Please find the attached copies of all speaker biographies for your reference.**

If you have any questions regarding the points for discussion in the panel please do not hesitate to contact Brian.

Should you also wish to discuss the content further in a phone call, please do let me know and I will be more than happy to assist in setting this up.

I look forward to meeting you at the conference.

Best wishes,  
Gergana

Gergana Vasileva  
Speaker and Program Assistant, WGC 2018

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## SPEAKER BIOGRAPHIES



**Brian M. Jones**  
Senior Vice President  
**M.J. Bradley & Associates, LLC**

As a Senior Vice President with M.J. Bradley & Associates (MJB&A), Brian Jones advises energy sector clients on strategy and policies related to climate change and sustainability. Brian's current efforts are focused on natural gas distribution and methane emissions strategies and policies, electric vehicle policy and utility programs, and corporate sustainability strategy. Prior to joining MJB&A in 1998, Brian worked on state energy and environmental policy while at the Commonwealth of Massachusetts Executive Office of Environmental Affairs. Brian holds a Bachelor's Degree in Political Science and Environmental Studies from Providence College.



**Leonardo Gelpi**  
Climate Change / GHG Management Manager  
**Eni Spa**

Leonardo Gelpi has been working in Eni, a major international Oil & Gas company, for more than 14 years. He is currently employed in the HSEQ Department, involved on Climate Change issues and GHG emissions management at corporate level. He is contributing, acting as technical Eni's representative, to the participation in several voluntary programs and partnerships related to methane management, like the Oil and Gas Climate Initiative and the Climate and Clean Air Coalition - Oil & Gas Methane Partnership.

Before joining HSEQ department, Leonardo achieved 6 years of experience in the R&D Eni department, where he was involved in several projects related to management of atmospheric pollution, modelling, and management of fugitive emissions.

Originally from Italy, Leonardo has a Master Degree in Environmental Engineering from the University of Rome.



**Melissa Adams**  
Chief Corporate Social Responsibility Officer  
**WGL Holdings/Washington Gas**

Ms. Adams formulates strategy and programs for the benefit of WGL and the communities we serve. She works to implement initiatives across all businesses that actualize corporate values and amplify brand positioning and business development while reducing risk. Key areas of focus include minimizing the effects the business has on the environment, through both internal operations and customer facing programs; promoting social objectives through philanthropy, volunteerism, and impact investing; advancing social equity and sustainability through training, real estate asset utilization, and procurement practices; and leading corporate community engagement.



**Richard Hyde**  
Director External Affairs  
**Southern Company Gas**

Richard works as the Executive Director of One Future in a loaned executive role. He has primary responsibility for the administrative functions of the group. In his role as Director of External Affairs for Southern Company Gas Richard has responsibility for the legislative and regulatory functions for the Commercial Businesses which include Fuels and Storage, Pipeline Investments and Energy Marketing. Richard has been in the natural gas industry for over 30 years, working for Panhandle Eastern and Trunkline Gas, Duke Energy, AGL Resources and Southern Company Gas. Richard has worked primarily in the state legislative arena, except for a brief stint in D.C. with Duke Energy as their primary pipeline representative.



**Vanessa Ryan**  
Senior Advisor, Shale Issues  
**Chevron Corporation**

Vanessa T. Ryan is Senior Adviser, Shale Issues at Chevron Corporation. She also serves as Chair of the Steering Committee of The Environmental Partnership, an industry group committed to continuously improving the industry's environmental performance. Previously, she was Senior Advisor for Chevron Asia-Pacific Exploration and Production, responsible for providing advice to Chevron's Asia-Pacific business on government and public affairs issues. She has served as Coordinator for Policy, Government, and Public Affairs for Chevron Vietnam in Ho Chi Minh City. Ms. Ryan joined Chevron as a Public Policy Adviser at Chevron Corporation, where she was responsible for the corporate responsibility report and advised on environmental, social, and geopolitical issues. Prior to joining Chevron she worked in social marketing firm focused on health and environment issues. She holds a Masters of Public Policy from the University of Southern California and a B.A. in Political Economy from UC Berkeley.



**Martha Yolanda Herrera Zapata**  
Project Engineer, Innovation and Technology Center (ICP- Colombian Petroleum Institute)  
**Ecopetrol**

With more than 15 years of experience in environmental solutions in the oil and gas sector, especially working with atmospheric contamination and pollution of water currents. The last 10 years she has worked in the Clean Technologies team of the Colombian Petroleum Institute (Ecopetrol's Innovation and Technology Center) in the structuring and implementation of the company's Climate Change Program and more specifically in the Greenhouse gas reduction initiatives and Methane reduction program to the integrated chain of Production, Transportation and Refining in Ecopetrol S.A.

Message

**From:** Weinstock, Larry [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ABF6EF85ED154D13AA590EA7C0ADDAC2-WEINSTOCK, LARRY]  
**Sent:** 6/15/2018 8:20:33 PM  
**To:** Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]; 'Adrian Shelley' [ashelley@citizen.org]; 'Adrienne Hollis' [adrienne@weact.org]; 'Andrew Hoekzema' [ahoekzema@capcog.org]; 'Beth Thornton (Flint)' [beth.thornton@dec.ny.gov]; 'Brian Mormino' [gt495@cummins.com]; 'Carolyn Keyes (Brown)' [ckeys@usw.org]; dgreenbaum@healtheffects.org [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9ec93cef9f064b97bcc1e68b4d53b377-dgreenbaum@healtheffects.org]; 'Daniel Nickey' [daniel.nickey@uni.edu]; 'David Foerter' [dfoerter@otcair.org]; 'Frank Prager' [frank.prager@xcelenergy.com]; 'Gary Jones' [gjones@printing.org]; 'Gillian Middlestaedt' [gmittelstaedt@thhnw.org]; 'Jennifer Brown (Rochford)' [brown\_jennifer\_m@cat.com]; 'Jennifer Kreusch' [jennifer.kreusch@lilly.com]; 'Kimberly Scarborough' [kimberly.scarborough@pseg.com]; kris.ray@colvilletribes.com [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a1da6039dc1e4f2d9c84a2598016004a-kris.ray@colvilletribes.com]; 'Kromeklia Bryant (Foerter)' [kbryant@otcair.org]; laliddington@aqm.co.knox.tn.us [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=90324dfb701a4c039eab0da4815edffd-laliddington@aqm.co.knox.tn.us]; mary@whatsinourair.org [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ea9291d7dd845d0be317f4c30d370f8-mary@whatsi]; 'Mary Uhl' [maryuhl@westar.org]; [Ex. 6] 'Michael Buser' [buser@okstate.edu]; 'Mike Rochford' [rochford\_mike@cat.com]; 'Mike Silverstein' [mike.silverstein@state.co.us]; 'Mitch Hescocox' [mitch@creationcare.org]; reecemc@dhec.sc.gov [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=514d8da796ca4e1a8c0cdf6979618732-reecemc@dhec.sc.gov]; 'Nancy Kruger' [nkruger@4cleanair.org]; natalene.cummings@fcpotawatomi-nsn.gov [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e1e414982ace41dc9a62890ae72be1de-natalene.cummings@fcpotawatomi-nsn.gov]; 'Patricia Strabbing' [patricia.strabbing@fcagroup.com]; 'Peter Pagano' [peter.a.pagano@boeing.com]; 'Renee Baecker (Reece)' [baeckerr@dhec.sc.gov]; 'Rhonda Anderson' [rhonda.anderson@sierraclub.org]; 'Robert Hodanbosi' [Robert.Hodanbosi@epa.ohio.gov]; 'Robert Morehouse' [Ex. 6]; Robert.Wyman@LW.com [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3386628dfac1492691741359d34f7fcf-Robert.Wyman@LW.com]; 'Roxanne Brown' [rbrown@usw.org]; 'Sara Hayes' [shayes@aceee.org]; 'Sherri Osse (Prager)' [sherri.g.osse@xcelenergy.com]; 'Steven Flint' [steven.flint@dec.ny.gov]; 'Steven Marcus' [Ex. 6]; 'Susan Collet' [susan.collet@toyota.com]; 'Ted Steichen' [SteichenT@api.org]; Tim\_hunt@afandpa.org [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f3b96873b8154c8b8b6955d799e272b8-Tim\_hunt@afandpa.org]; 'Tomas Carbonell' [tcarbonell@edf.org]  
**CC:** Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Lubetsky, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e125d09a658e48119789ccae5712b4a5-JLUBETSK]  
**Subject:** CAAAC 2018 Meeting Date

Dear CAAAC,

We have a hotel so we can confirm the date for our next meeting, September 26<sup>th</sup> and 27<sup>th</sup> 2018. The meeting will be held at the Holiday Inn Arlington at Ballston, 4610 Fairfax Drive, Arlington, VA 22203, and you can now make sleeping room reservations. They can either use this link [Ex. 6] or call 1-866-876-4238.

The agenda is not yet finalized, but for planning purposes, please plan to be at the meeting from 1 pm on the 26<sup>th</sup> and end at 12 pm on the 27<sup>th</sup>. When thinking about flights or trains, note that travel time to and from the hotel at mid-day can be anywhere from about 20 minutes to Reagan National Airport or 30 to 40 minutes from Union Station or Dulles and at least an hour from BWI. Washington area traffic is unpredictable so your travel time may vary especially



from Union Station or BWI. In a pinch you can take side streets to National Airport so it is unlikely to ever be much more than 30 minutes. For those who want to use the train it is a 3 minute walk from the Ballston Metro Station which is on the both the Orange and Silver lines. Please be aware that travel to National Airport or Union Station requires a transfer within the metro system.

As an FYI, If you want to meet people in Washington outside of the meeting times it is an under 20 minute metro ride to downtown DC.

### **Hotel Reservations**

A block of rooms has been reserved for CAAAC members at the Holiday Inn Arlington at Ballston, 4610 Fairfax Drive, Arlington, VA 22203, and you can now make sleeping room reservations. You can either use this link [Ex. 6](#) or call 1-866-876-4238. The hotel cost is the federal per diem rate for Washington, DC. We have reserved some roos for the 25<sup>th</sup> and 27<sup>th</sup> for those that need an extra night to comfortably travel and make the meeting.

### **Travel Assistance**

EPA can reimburse you for travel expenses reasonably related to attending this meeting (e.g. airfare, hotel room the night before and night after the meeting, etc.). If you are requesting EPA pay for part or all of your travel, DO NOT make your own travel arrangements. Instead, please contact Mary Resendez in the EPA Office of Air Planning and Program Support at [resendez.mary@epa.gov](mailto:resendez.mary@epa.gov) as soon as you can.

### **Agenda**

We are currently developing the meeting agenda. I hope to have it to you soon. We are planning for either a single dinner for the whole group or a number of alternative locations for smaller groups. The hotel may be outside the city but there are a number of very good restaurants in the immediate area representing a wide variety of cuisines including Spanish, Filipino, Russian .

If you have any general questions, please do not hesitate to call me at 202-564-9226 or email me at [Weinstock.larry@epa.gov](mailto:Weinstock.larry@epa.gov) .

Thanks, and I look forward to seeing you all on September 26.

Tamara

Message

---

**From:** Brian Jones [bjones@mjbroadley.com]  
**Sent:** 6/15/2018 2:06:15 PM  
**To:** Gergana Vasileva [GVasileva@thecwcgroup.com]; Martha Yolanda Herrera Zapata [martha.herrera@ecopetrol.com.co]; Adams, Melissa E [MelissaAdams@washgas.com]; Ryan, Vanessa A [vanessa.ryan@chevron.com]; Hyde, Richard [RIHYDE@southernco.com]; Gelpi Leonardo [Leonardo.Gelpi@eni.com]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]  
**CC:** Pryor, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee9b6e9642c041388c84a73046c1e025-Pryor, Just]; Sarah Sandison [ssandison@thecwcgroup.com]; Sawyer, Cheryl [sawj@chevron.com]; DeLuca, Isabel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b021c30cbee4637a7c7ca683e5e044a-IDELUCA]  
**Subject:** RE: 27th World Gas Conference - Moderator Introduction - The Role of Voluntary Action in Methane Management (Friday June 28, 2018)

Thank you Gergana!

Hi Everyone,

I am looking forward to the WGC and our panel on the Friday June 29.

My contact information is below. Please contact me direct with any questions you may have.

I will reach out individually to each of you to discuss your presentation. If we can find a time to have a call together, we can do that as well.

Thanks,

Brian

---

Brian M. Jones  
Senior Vice President  
M.J. Bradley & Associates, LLC  
47 Junction Square Drive  
Concord, MA 01742

Office: **Ex. 6** Mobile: **Ex. 6**  
[www.mjbradley.com](http://www.mjbradley.com)

**MJB & A**

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---

**From:** Gergana Vasileva [mailto:GVasileva@thecwcgroup.com]  
**Sent:** Friday, June 15, 2018 9:46 AM  
**To:** Martha Yolanda Herrera Zapata <martha.herrera@ecopetrol.com.co>; Adams, Melissa E <MelissaAdams@washgas.com>; Ryan, Vanessa A <vanessa.ryan@chevron.com>; Hyde, Richard <RIHYDE@southernco.com>; Gelpi Leonardo <Leonardo.Gelpi@eni.com>; Wehrum, Bill <Bill@epa.gov>; Brian Jones <bjones@mjbroadley.com>  
**Cc:** pryor.justin@epa.gov; Sarah Sandison <ssandison@thecwcgroup.com>; Sawyer, Cheryl <sawj@chevron.com>;

DeLuca, Isabel <DeLuca.Isabel@epa.gov>

**Subject:** RE: 27th World Gas Conference - Moderator Introduction - The Role of Voluntary Action in Methane Management (Friday June 28, 2018)

Dear all,

It was just brought to my attention that Brian was not included in the email below. Please accept my apologies.

Please find the biographies attached.

Best wishes,

Gergana

---

**From:** Gergana Vasileva

**Sent:** 05 June 2018 16:32

**To:** 'Martha Yolanda Herrera Zapata'; 'Adams, Melissa E'; 'Ryan, Vanessa A'; 'Hyde, Richard'; 'Gelpi Leonardo'; 'Wehrum.Bill@epa.gov'

**Cc:** [pryor.justin@epa.gov](mailto:pryor.justin@epa.gov); Sarah Sandison; Sawyer, Cheryl; 'DeLuca, Isabel'

**Subject:** 27th World Gas Conference - Moderator Introduction - The Role of Voluntary Action in Methane Management (Friday June 28, 2018)

Dear all,

In anticipation of the upcoming 27<sup>th</sup> World Gas Conference, please allow me to introduce **Brian M. Jones**, Senior Vice President, **M.J. Bradley & Associates, LLC** and the **moderator** of the Workshop session **The Role of Voluntary Action in Methane Management** which will take place on **Friday June 29, 2018** from **10:20 AM – 11:40 AM**.

The Workshop session is **1 hour 20 minutes in duration**. The session will commence with Brian introducing the session topic and each speaker. Each speaker will then have **8-10 minutes to deliver their presentation** and then return to their seat on stage. The session will conclude with audience Q&A.

The session will be made up of:

- **Opening Remarks: Bill Wehrum**, Assistant Administrator, Office of Air and Radiation, **U.S. Environmental Protection Agency (EPA)**
- **Leonardo Gelpi**, Climate Change / GHG Management Manager, **Eni Spa**
- **Melissa Adams**, Chief Corporate Social Responsibility Officer, **WGL Holdings/Washington Gas**
- **Richard Hyde**, Director External Affairs, **Southern Company Gas**
- **Vanessa Ryan**, Senior Advisor, Shale Issues, **Chevron Corporation**
- **Martha Yolanda Herrera Zapata**, Project Engineer, Innovation and Technology Center (ICP- Colombian Petroleum Institute), **Ecopetrol**.

**Please find the attached copies of all speaker biographies for your reference.**

If you have any questions regarding the points for discussion in the panel please do not hesitate to contact Brian.

Should you also wish to discuss the content further in a phone call, please do let me know and I will be more than happy to assist in setting this up.

I look forward to meeting you at the conference.

Best wishes,

Gergana

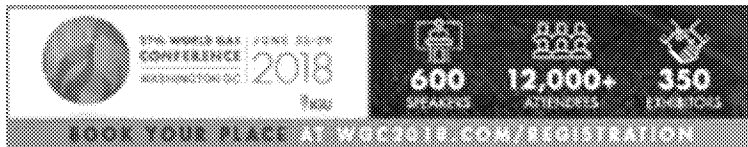
Gergana Vasileva

Speaker and Program Assistant, WGC 2018

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**Tel 020 79780000 / Fax 020 79780099**

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Message

**From:** Gergana Vasileva [GVasileva@thecwcgroup.com]  
**Sent:** 6/15/2018 1:42:00 PM  
**To:** Martha Yolanda Herrera Zapata [martha.herrera@ecopetrol.com.co]; Adams, Melissa E [MelissaAdams@washgas.com]; Ryan, Vanessa A [vanessa.ryan@chevron.com]; Hyde, Richard [RIHYDE@southernco.com]; Gelpi Leonardo [Leonardo.Gelpi@eni.com]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Brian Jones [bjones@mjb Bradley.com]  
**CC:** Pryor, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee9b6e9642c041388c84a73046c1e025-Pryor, Just]; Sarah Sandison [ssandison@thecwcgroup.com]; Sawyer, Cheryl [sawj@chevron.com]; DeLuca, Isabel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b021c30cbee4637a7c7ca683e5e044a-IDELUCA]  
**Subject:** RE: 27th World Gas Conference - Moderator Introduction - The Role of Voluntary Action in Methane Management (Friday June 28, 2018)  
**Attachments:** ATT00001.txt

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**From:** Gergana Vasileva  
**Sent:** 05 June 2018 16:32  
**To:** 'Martha Yolanda Herrera Zapata'; 'Adams, Melissa E'; 'Ryan, Vanessa A'; 'Hyde, Richard'; 'Gelpi Leonardo'; 'Wehrum.Bill@epa.gov'  
**Cc:** pryor.justin@epa.gov; Sarah Sandison; Sawyer, Cheryl; 'DeLuca, Isabel'  
**Subject:** 27th World Gas Conference - Moderator Introduction - The Role of Voluntary Action in Methane Management (Friday June 28, 2018)

Dear all,

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- **Richard Hyde**, Director External Affairs, **Southern Company Gas**
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- **Martha Yolanda Herrera Zapata**, Project Engineer, Innovation and Technology Center (ICP- Colombian Petroleum Institute), **Ecopetrol**.

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Should you also wish to discuss the content further in a phone call, please do let me know and I will be more than happy to assist in setting this up.

I look forward to meeting you at the conference.

Best wishes,  
Gergana

Gergana Vasileva  
Speaker and Program Assistant, WGC 2018  
CWC Solutions, part of CWC Group Limited  
Direct Line: **Ex. 6** w: [www.cwc-solutions.com](http://www.cwc-solutions.com)

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Message

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**From:** Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** 4/23/2018 8:13:45 PM  
**To:** Patrick Kelly [kellyp@api.org]  
**CC:** Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]  
**Subject:** RE: API Letter to EPA RE: Enforcement of E15 Labeling Requirements

Thank you.

We will review.

Susan

Susan Parker Bodine  
Assistant Administrator  
Office of Enforcement and Compliance Assurance

Ex. 6

---

**From:** Patrick Kelly [mailto:kellyp@api.org]  
**Sent:** Monday, April 23, 2018 3:48 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Brooks, Phillip <Brooks.Phillip@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** API Letter to EPA RE: Enforcement of E15 Labeling Requirements

Ms. Bodine,  
Please see the attached letter from API regarding the enforcement of E15 Labeling Requirements.  
Regards,

**Patrick G. Kelly**  
American Petroleum Institute  
1220 L Street, NW Washington, DC 20005  
Office: [Ex. 6] email: [kellyp@api.org](mailto:kellyp@api.org)



Message

---

**From:** Patrick Kelly [kellyp@api.org]  
**Sent:** 4/23/2018 7:48:25 PM  
**To:** Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]  
**CC:** Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]  
**Subject:** API Letter to EPA RE: Enforcement of E15 Labeling Requirements  
**Attachments:** API Letter to EPA 4.23.18.pdf

Ms. Bodine,  
Please see the attached letter from API regarding the enforcement of E15 Labeling Requirements.  
Regards,

**Patrick G. Kelly**  
American Petroleum Institute  
1220 L Street, NW Washington, DC 20005  
Office: Ex. 6 | email: [kellyp@api.org](mailto:kellyp@api.org)







Patrick G. Kelly  
Senior Policy Advisor

Fuels Issues, Downstream

1220 L Street, NW  
Washington, DC 20005-4070  
USA

Telephone Ex. 6  
Fax 202-682-8051  
Email [kellyp@api.org](mailto:kellyp@api.org)  
[www.api.org](http://www.api.org)

April 23, 2018

The Honorable Susan Bodine  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

*Transmitted via email*

**Re: Enforcement of E15 Labeling Requirements**

Dear Assistant Administrator Bodine,

We are writing to the Agency to express our concerns regarding the enforcement of EPA's E15 regulations. We request that EPA issue an Enforcement Alert clarifying the regulations which prohibit the sale of E15 as Ethanol Flex-Fuel (flex-fuel) and advise the market that EPA will fully enforce these regulations.

For the past several years, some fuel retailers have engaged in the misleading practice of relabeling E15 as flex-fuel during the summer months to circumvent the Clean Air Act (CAA or the Act) Reid Vapor Pressure (RVP) limits. As a result of EPA's CAA section 211(f) substantially similar waiver for E15, E15 is classified as gasoline under EPA's regulations (not sometimes gasoline and sometimes flex-fuel) and is subject to EPA's summer RVP and pump label regulations. Some ethanol groups have actively endorsed the practice of relabeling E15 as flex-fuel to circumvent the RVP controls, creating confusion in the marketplace and potential economic harm to retailers that abide by the rules. Notwithstanding EPA's clear statements in 2016<sup>1</sup> that the Agency's RVP regulations cannot be avoided by changing the pump labels, we

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<sup>1</sup> 81 Fed. Reg. 80828, 80863 (Nov. 16, 2016): "All gasoline, including E15, is subject to all of the requirements applicable to gasoline because of its formulation, not because of its end use. These requirements cannot be circumvented by relabeling. Allowing a fuel to be exempted from fuel quality requirements simply based on a

continued to observe market participants engaging in this practice during the Summer of 2017. We are not aware of any enforcement actions initiated by EPA to stop the labeling violations, even though EPA receives information concerning E15 pump labels and RVP data from the RFG Survey Association that almost certainly documents these violations.<sup>2</sup> Failure to provide clear messaging to consumers may ultimately result in misfueling incidents and ultimately undermine consumer confidence in the Agency's ability to protect their interests.

Both the EPA regulations and the CAA could not be clearer. As EPA has consistently recognized, E15 does not qualify for the one-pound waiver and must meet the summertime RVP requirements to be legally sold. The attempt to label and sell E15 as flex-fuel is an unlawful attempt to bypass the existing RVP regulatory requirements. If this labeling is allowed, then theoretically, the same logic could apply to virtually any blend of ethanol and gasoline such as E10.

EPA should clarify that relabeling E15 as flex-fuel is illegal. This action is needed immediately in light of the impending 2018 summertime gasoline season. As we near the June 1 beginning of the summer low RVP season, we urge EPA to educate market participants concerning the labeling and RVP regulations and advise retailers that EPA will fully enforce the law. EPA should impose civil penalties which include the requirement for violators to surrender the economic benefits of the non-compliance. See 42 USC 7545(d).<sup>3</sup> This is necessary to ensure that those who are violating EPA's regulations do not gain an unfair competitive advantage and profit from violating the law.

In summary, we request EPA to issue an Enforcement Alert clarifying the regulations which prohibit the sale of E15 as flex-fuel and advise market participants that EPA will fully enforce the law, based on the following:

- The CAA, its implementing regulations (at 40 CFR 80.27) and State Implementation Plans set RVP requirements for motor fuels. Congress granted a one-pound waiver from those RVP requirements for E10 blends. The statute is clear that the one-pound RVP waiver does not extend to E15 blends and EPA has explicitly rejected granting RVP waivers to E15 blends.

---

statement of its intended use would undermine the EPA's ability to assure compliance with fuel quality requirements."

<sup>2</sup> If EPA has initiated any enforcement actions concerning E15 labeling or RVP violations, please provide us with copies of all notices of violation issued by the Agency concerning such violations.

<sup>3</sup> 42 USC 7545(d)(1) states that any person who violates regulations prescribed under 7545(c), which includes the RVP regulations, "shall be liable to the United States for a civil penalty of not more than the sum of [\$37,500] for every day of such violation and the amount of economic benefit or savings resulting from the violation."

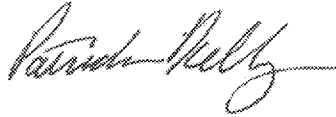
- Allowing retailers to sell E15 as flex-fuel is contrary to law, undermines EPA policy, and unjustly enriches those who violate the Agency's regulations.
- The marketing of E15 is subject to EPA's Misfueling Mitigation Rule, a rule that sets forth several different requirements regarding sampling, labeling, and practices designed to prevent misfueling. Retailers offering E15 must either participate in an independent survey consortium plan (e.g., the RFG Survey Association) or have their own survey plan approved by EPA.
- Allowing retailers to sell E15 as flex-fuel creates the very consumer confusion that the misfueling mitigation rule was intended to prevent.

We would be happy to discuss this in greater detail and we look forward to your acting on this important issue in advance of the June 1 effective date at retail for summer gasoline standards.

If you have any questions concerning this request, please contact me at

**Ex. 6**

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Kelly", with a stylized flourish at the end.

Patrick Kelly  
Senior Policy Advisor

Message

---

**From:** Richard Moskowitz [RMoskowitz@afpm.org]  
**Sent:** 2/12/2018 10:31:42 PM  
**To:** Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]  
**CC:** Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Argyropoulos, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0149b93d2780437a9c2b6d8477df7991-pargyrop]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Weihrach, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=74d426b7439045d9a0a65b186ea68b21-Jweihrach]  
**Subject:** 2017 Cellulosic Waiver Petition  
**Attachments:** Cellulosic Waiver Petition 2017 final 180212.pdf

Gentlemen,

Attached please find AFPM's petition for a supplemental waiver of the 2017 cellulosic biofuel standard. If you have any questions concerning this matter, please contact me at Ex. 6

Respectfully,

Richard Moskowitz  
General Counsel

American  
Fuel & Petrochemical  
Manufacturers  
1667 K Street NW  
Suite 700  
Washington, DC 20006

Ex. 6

[rmoskowitz@afpm.org](mailto:rmoskowitz@afpm.org)  
Learn more about AFPM at [afpm.org](http://afpm.org)

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Richard Moskowitz  
General Counsel

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1667 K Street, NW  
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February 12, 2018

202.457.0480 office  
Ex. 6 direct  
202.457.0486 fax  
Rmoskowitz@afpm.org

Administrator Scott Pruitt  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 1101A  
Washington, D.C. 20460

RE: Petition for Waiver of 2017 Cellulosic Biofuel Volumetric Requirements

Dear Administrator Pruitt:

Pursuant to Section 211(o)(7)(A)(ii) of the Clean Air Act (CAA or Act), the American Fuel & Petrochemical Manufacturers (AFPM), on behalf of its U.S. refining members, hereby petitions the Environmental Protection Agency (EPA or the Agency) to waive the volumes of cellulosic biofuels required for the 2017 compliance year under the Renewable Fuel Standard (RFS) by an amount equal to the difference between the 2017 cellulosic mandate and the amount of cellulosic biofuel production in 2017 (hereinafter the Petition). EPA's data demonstrate that domestic cellulosic biofuel production in 2017 fell short of the 311 million ethanol-equivalent gallon mandate by approximately 83.6 million ethanol-equivalent gallons.<sup>1</sup> Accordingly, AFPM requests that EPA exercise its waiver authority to reduce the cellulosic biofuel mandate by that amount.

## BACKGROUND

AFPM represents high-tech American manufacturers, fueling and building America's future. Our members produce virtually all the refined petroleum products and petrochemicals manufactured in the United States and are obligated parties under EPA's RFS. AFPM's refining members are adversely impacted by EPA's overestimate of 2017 cellulosic biofuel production and are unable to acquire the requisite amount of cellulosic biofuel Renewable Identification Numbers (RINs) to comply with EPA's 2017 cellulosic mandate under the RFS.

In December 2016, EPA promulgated the applicable volumetric requirements for various renewable fuels under the RFS for compliance year 2017.<sup>2</sup> This rulemaking established the mandated volume of cellulosic biofuel for 2017 at 311 million ethanol-equivalent gallons. In promulgating the final rule, EPA exercised its waiver authority to reduce the statutorily-prescribed amount of cellulosic biofuel from 5.50 billion gallons to 311 million gallons. In

<sup>1</sup> To the extent additional cellulosic RINs are available for compliance, but are not presently listed on EMTS, EPA should update EMTS and adjust this waiver request to correspond to the actual shortfall of cellulosic RINs.

<sup>2</sup> See 81 *Federal Register* 89746 (December 12, 2016).



connection with that rulemaking, AFPM supported EPA's decision to use its cellulosic waiver authority, but cautioned EPA that even the reduced cellulosic volumes EPA was contemplating in the proposal were too aggressive and unlikely to be achieved.

## DISCUSSION

According to EPA's Moderated Transaction System (EMTS), there is a significant shortfall in the quantity of cellulosic biofuels produced in 2017. EPA established the cellulosic standard for 2017 based upon its predictions that cellulosic biofuel producers would manufacture 311 million ethanol-equivalent gallons. EMTS data show cellulosic biofuel production for 2017 totaled only 227.4 million gallons, meaning EPA significantly overestimated the available domestic supply to the tune of 83.6 million gallons.<sup>3</sup> This 25 percent shortfall, combined with other factors discussed below, supports EPA's issuance of a supplemental partial waiver of the 2017 cellulosic standard.

### A. The Clean Air Act Authorizes EPA to Grant This Petition.

Congress anticipated the possibility that its aggressive renewable fuel targets might not be achievable and established several waiver provisions in the CAA that EPA could use to relieve obligated parties of the duty to comply with unachievable mandates. Under Section 211(o)(7)(A) of the CAA, any person subject to the requirements of the RFS may petition EPA to exercise its waiver authority.

The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirements of paragraph (2) in whole or in part on petition by one or more States, *by any person subject to the requirements of this subsection*, or by the Administrator on his own motion by reducing the national quantity of renewable fuel required . . . . based on a determination by the Administrator, after public notice and opportunity for comment, that *there is an inadequate domestic supply*.<sup>4</sup>

Thus, AFPM, on behalf of its U.S. refining members subject to the RFS, is petitioning EPA to grant a partial supplemental waiver of the 2017 cellulosic biofuel standard in an amount equal to the shortfall of cellulosic biofuel production due to "inadequate domestic supply" of cellulosic biofuel.

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<sup>3</sup> See <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/2017-renewable-fuel-standard-data> (last accessed on February 12, 2018).

<sup>4</sup> 42 U.S.C. §7545(o)(7)(A)(ii) (emphasis added).



**B. The Failure to Grant the Relief Requested in this Petition Will Penalize Obligated Parties for the Conduct of Unrelated Third Parties.**

Apart from the statutory justification described above, a supplemental partial waiver of the cellulosic biofuel mandate is necessary under the statute to prevent imposing a penalty on obligated parties who, in the face of an inadequate domestic supply of cellulosic RINs, would be forced to purchase cellulosic waiver credits under Section 211(o)(7)(D)(ii) at an approximate cost of more than \$165 million:

Whenever the Administrator reduces the minimum cellulosic biofuel volume under this subparagraph, the Administrator shall make available for sale cellulosic biofuel credits at the higher of \$0.25 per gallon or the amount by which \$3.00 per gallon exceeds the average wholesale price of a gallon of gasoline in the United States.<sup>5</sup>

EPA has established a cellulosic waiver credit price of \$2.00 for 2017.<sup>6</sup> Based on the shortfall in cellulosic biofuel production, the 2017 “phantom fuel” penalty would exceed \$165 million. This is not what Congress intended. Indeed, the D.C. Circuit has looked unfavorably upon EPA’s prior suggestion that obligated parties could purchase cellulosic waiver credits for the portion of the cellulosic mandate that was unfulfilled due to an overly-aggressive mandate that led to cellulosic biofuel production shortfalls:

Apart from their role as captive consumers, the refiners are in no position to ensure, or even contribute to, growth in the cellulosic biofuel industry. ‘Do a good job, cellulosic fuel producers. If you fail, we’ll fine your customers.’<sup>7</sup>

As the D.C. Circuit noted, it is unfair to penalize refiners for failing to purchase fuel that is not available. Congress recognized that such a situation could occur and granted EPA waiver authority to remedy such an inequitable situation. EPA should invoke its waiver authority here as it has done in previous years to align the cellulosic biofuel mandate to actual production volumes.

A partial waiver of the 2017 cellulosic biofuel volume obligation to reflect actual production numbers would be consistent with EPA’s prior practice over the last six years. In the past when production has fallen short of the mandated volume, EPA and the D.C. Circuit have revised the cellulosic biofuel mandate to match actual production. For 2011, EPA responded to

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<sup>5</sup> 42 U.S.C. § 7545(o)(7)(D)(ii).

<sup>6</sup> “Notice of Cellulosic Waiver Credit Calculation for 2017,” <https://www.epa.gov/renewable-fuel-standard-program/notice-cellulosic-waiver-credit-price-calculation-2017#rule-summary>.

<sup>7</sup> *American Petroleum Institute v. EPA*, 706 F.3d 474, 480 (DC Cir. 2013).



AFPM's petition for reconsideration and petition for review by "rescinding the 2011 cellulosic biofuel applicable standard and ... refund[ing] the money paid by obligated parties to purchase cellulosic waiver credits to comply with the standard."<sup>8</sup> In a challenge to EPA's 2012 cellulosic mandate, the D.C. Circuit vacated the cellulosic mandate, noting that even though EPA originally waived most of the 500 million gallon statutory cellulosic mandate (*i.e.*, establishing the mandate at 10.45 million ethanol-equivalent gallons), that mandate resulted in production shortfalls that unfairly penalized obligated parties.<sup>9</sup>

In 2013, EPA issued its final RFS rule approximately eight months after the compliance year had begun. In response, AFPM filed a petition for reconsideration demonstrating to the Agency that there would be a significant cellulosic production shortfall. EPA granted AFPM's petition for reconsideration and reduced the 2013 cellulosic mandate to reflect actual production.<sup>10</sup> In support of its decision, EPA cited to its overestimation of cellulosic biofuel production and the ensuing inequitable burden on obligated parties:

Finalizing this adjusted 2013 cellulosic biofuel standard expeditiously will reduce regulatory uncertainty and avoid unnecessary cost or burden for obligated parties. Until this adjusted cellulosic biofuel standard is finalized, obligated parties will have to comply with the current and significantly higher 2013 cellulosic biofuel standard. This would likely involve a substantial purchase of cellulosic waiver credits, which EPA would subsequently need to reimburse.<sup>11</sup>

Similarly, in 2014 and 2015, EPA established the cellulosic biofuel mandates to match actual production volumes. EPA did not need to issue a supplemental waiver for these years because the standards were finalized after (or near) the conclusion of the compliance years. Thus, the cellulosic biofuel volume obligations mirrored the actual number of cellulosic RINs produced in those years.<sup>12</sup>

The 2017 compliance year again presents a significant cellulosic biofuel production shortfall, which necessitates the issuance of a supplemental partial waiver.

### **C. Cellulosic Waiver Credits Are a Consumer Protection Mechanism.**

The existence of the cellulosic waiver credit is not an alternative compliance mechanism to address shortfalls resulting from EPA's overly aggressive mandates. Congress included a

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<sup>8</sup> 80 *Federal Register* at 77419, 77508-09 (December 14, 2015).

<sup>9</sup> See also 78 *Federal Register* 49794, 49828 (August 15, 2013) where, in the final RFS rule for 2013, EPA implemented the January 2013 court decision for 2012 cellulosic biofuels.

<sup>10</sup> See 79 *Federal Register* 25025 (May 2, 2014).

<sup>11</sup> *Id.* at 25025.

<sup>12</sup> See 80 *Federal Register* 77420 (December 14, 2015).





provision for obligated parties to purchase cellulosic waiver credits at a fixed price to limit the premium cellulosic biofuel producers could charge for their fuel and ensure consumers were not held hostage to purchase cellulosic RINs at prices that are uneconomical. The statute contains a formula that establishes the maximum premium that may be charged for cellulosic biofuel.<sup>13</sup> The availability of these credits creates a ceiling on the price cellulosic biofuel producers may charge for their fuel. This ceiling is equal to the price of an advanced biofuel RIN plus the calculated price for the cellulosic waiver credit. This important consumer protection mechanism protects obligated parties from the obligation to purchase cellulosic biofuel regardless of its price.

Congress did not intend for EPA to treat the cellulosic waiver credit as an alternative means of complying with the statute when the cellulosic biofuel mandate exceeds the domestic supply. Indeed, the D.C. Circuit specifically rejected EPA's reliance on the cellulosic waiver credits as an alternative compliance mechanism. EPA defended against a challenge to its 2012 cellulosic standard as being too high by claiming that "the availability of waiver credits means that obligated parties *always* have the means to comply with the cellulosic standard, and at a cost that is predictable."<sup>14</sup>

The D.C. Circuit rejected this argument, noting that the cellulosic waiver credit applied in this manner would serve as an unreasonable penalty for behavior that is beyond the control of the obligated parties.<sup>15</sup>

#### **D. EPA's Rationale for Denying AFPM's Petition to Waive the 2016 Cellulosic Standard Is Inapplicable**

On December 28, 2016, AFPM petitioned EPA for a supplemental partial waiver of the 2016 cellulosic standard to address an *anticipated* 40-60 million gallon shortfall in cellulosic production that year. On January 17, 2017, EPA denied that petition, based in part on a new analysis of RINs to be attributed to late generation in December 2016. Departing from past practice, EPA rushed its denial out prior to the change in administration and did not take comment on AFPM's petition or its new analysis of 2017 cellulosic compliance options. AFPM petitioned for reconsideration based on this new information and that petition remains pending.

While AFPM does not concede the validity of EPA's reasons for denying AFPM's 2016 petition, the stated rationale for denying our 2016 waiver petition simply does not apply to the 2017 shortfall as we discuss in greater detail below.

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<sup>13</sup> See 42 U.S.C. § 7545(o)(7)(D)(ii).

<sup>14</sup> *API v. EPA*, Reply Brief for Respondent EPA at 36 (filed August 20, 2012).

<sup>15</sup> See *API v. EPA*, 706 F.3d at 480 ("Apart from their role as captive consumers, the refiners are in no position to ensure, or even contribute to, growth in the cellulosic biofuel industry. 'Do a good job, cellulosic fuel producers. Do a good job, cellulosic fuel producers. If you fail, we'll fine your customers.'").



1. The Quantity of Carryover RINs Available to Satisfy the 2017 Cellulosic Mandate is Inadequate.

EPA largely denied AFPM's 2016 petition by finding that obligated parties would not need to purchase cellulosic waiver credits because there were adequate carryover RINs available for compliance. This finding is incorrect. In its denial, EPA estimated there were 39 million cellulosic carryover RINs available for compliance. The existence of carryover RINs at the macro level, however, does not mean those RINs are actually available to all obligated parties on an open market. Because RINs are valid for two years, individual obligated parties may "bank" carryover RINs to mitigate the risks of supply fluctuations and ensure compliance in future years, rather than sell them to other obligated parties. Indeed, given EPA's history of overestimating cellulosic biofuel production, some obligated parties may be incentivized to retain these surplus RINs rather than sell them to other obligated parties. As a result, carryover RINs are not always available to all obligated parties when a surplus exists. In its denial of AFPM's petition, however, EPA failed to analyze the "real world" operation of the cellulosic biofuel RIN market and the ability of individual obligated parties to actually obtain carryover cellulosic RINs.

In addition, today, only 31.4 million 2016 cellulosic carryover RINs remain, which is wholly insufficient to offset the current production shortfall. As noted above, EMTS data show a 2017 shortfall of 83.6 million RINs. This means there is more than a 50 million RIN gap between the supply of 2016/2017 cellulosic biofuel RINs available for compliance and EPA's final 2017 standard. Simple math indicates that obligated parties will be required to purchase millions of cellulosic waiver credits to comply with the 2017 standard. As such, in the context of this Petition, EPA cannot base its decision on the existence of carryover RINs since they simply will not exist for many obligated parties or in anywhere near sufficient quantities for all obligated parties.

2. Obligated Parties Do Not Act in Concert and Are Unlikely to Suppress Cellulosic Biofuel Production.

In its denial of AFPM's 2016 petition, EPA asserted that cellulosic biofuel producers and/or blenders may be unable or unwilling to store cellulosic biofuel or hold cellulosic biofuel RINs until after the end of the compliance year.<sup>16</sup> Whether cellulosic biofuel producers and/or blenders are willing to store cellulosic biofuel or RINs is not relevant to this Petition, and in the context of EPA's denial of the 2016 petition, the Agency has not produced any data supporting

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<sup>16</sup> EPA Denial of 2016 Supplemental Waiver Petition at 3: "[I]f obligated parties believed that such waivers would be granted even in situations where use of available carryover RINs would allow compliance with the unadjusted standard, then obligated parties may decide to postpone acquisition of cellulosic biofuel or cellulosic RINs in future years, based on hopes of a waiver, thereby potentially harming the prospects of cellulosic biofuel producers who rely on ongoing sales of their product to remain profitable and competitive and undermining the articulated goals of Congress in establishing the RFS program."



its assertion. EPA's suggestion that obligated parties would delay the purchase of cellulosic RINs in an effort to disrupt ongoing sales of cellulosic biofuel to secure a future supplemental waiver is preposterous.

The vast majority of obligated refiners do not produce cellulosic biofuel and are in no position to suppress the generation of these cellulosic RINs. Once cellulosic biofuels are produced, a corresponding amount of RINs are attached and registered on EMTS regardless of whether those RINs are purchased by an obligated party. AFPM is not requesting a waiver of the cellulosic mandate based on RINs generated and available on EMTS. AFPM is asking EPA to waive the portion of the standard corresponding to cellulosic biofuel that was *never produced*. In other words, even if obligated parties chose not to purchase RINs until the compliance date at the conclusion of the year, those unpurchased RINs would still be recorded on EMTS, available, and would not be within the scope of this Petition based on inadequate domestic supply. Because cellulosic biofuel demand is driven by the initial promulgation of the annual mandate, a supplemental waiver following completion of the compliance would not "depress the demand for" or "investment in the production of cellulosic biofuel."<sup>17</sup> The "investment risks already experienced by this nascent industry"<sup>18</sup> are the same regardless if EPA issues a supplemental waiver based on the shortfall of cellulosic production during the compliance year.

3. Cellulosic Waiver Credits and Running Deficits Operate as Unnecessary Penalties on Obligated Parties Who Have no Ability to Produce or Blend Cellulosic Biofuel.

EPA should recognize that the failure to issue a supplemental partial waiver of the cellulosic biofuel standard would act as a penalty on obligated parties, who through no fault of their own would be forced to purchase cellulosic waiver credits or run a compliance deficit. Discussions with AFPM members indicate that most obligated parties do not view the deficit option as a viable compliance mechanism, as the regulations prevent obligated parties from incurring a deficit in two consecutive years, and RFS obligations have increased year-over-year. Running an RFS deficit is a risky financial decision. This leaves the purchase of cellulosic waiver credits as the only reasonable compliance path for most obligated parties.

In its denial of AFPM's 2016 petition, EPA stated:

EPA may slightly over-estimate or underestimate production from year-to-year does not establish that a slight over-estimate creates an unjust 'penalty, just as the availability of carryover RINs from years where EPA underestimated volume when setting the standard should not be seen as an unjust boon or bonus.<sup>19</sup>

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<sup>17</sup> EPA Denial of AFPM 2016 petition at 3.

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.* at 5.



AFPM Petition for Cellulosic Waiver (2017)  
February 12, 2018  
Page 8 of 8

We acknowledge that EPA cannot be expected to predict the precise quantity of cellulosic biofuel and we do not expect EPA to adjust for *de minimis* variances; however, this year, the variance between EPA's estimate and actual cellulosic production currently puts obligated parties on the hook to purchase more than \$100 million in waiver credits.<sup>20</sup> This variance is not *de minimis* and is not what Congress intended.

\* \* \* \*

EPA should take prompt action on this Petition. While the Clean Air Act requires EPA to act on this Petition within 90 days,<sup>21</sup> we respectfully request a more expeditious decision because the 2017 compliance must be assured on or before March 30, 2018 (per 40 CFR 80.1451(a)(1)), just weeks away.<sup>22</sup>

Given the clear shortfall in cellulosic biofuels produced in 2017 and prior precedent, it is not reasonable to require the purchase of cellulosic waiver credits while EPA solicits public comment and completes other required elements of the waiver process, including consultation with the Departments of Agriculture and Energy.

If you have any questions concerning the issues raised in this Petition, please contact the undersigned.

Respectfully submitted,

Richard Moskowitz  
General Counsel

cc: William Werhum  
Christopher Grundler  
John Weihrauch

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<sup>20</sup> The current cellulosic biofuel shortfall identified in EMTS would require obligated parties to purchase approximately \$165 million in cellulosic waiver credits. Last year approximately 12 million cellulosic biogas RINs were added in EMTS after the January update. If additional 2017 biogas cellulosic RINs become available this month, the cellulosic waiver credit purchase obligation would be correspondingly reduced.

<sup>21</sup> See 42 U.S.C. §7545 (o)(7)(B).

<sup>22</sup> Note that the regulatory compliance date (March 31, 2018) is a Saturday.

Message

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**From:** Landin, David [dlandin@hunton.com]  
**Sent:** 4/12/2018 2:08:22 PM  
**To:** Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]  
**Subject:** TSCA release on April 20

Not sure what is to be “released” on the 20<sup>th</sup>, if anything. Any insights that can be shared?

But also need to get Kelly hooked up with Nancy Beck.

Thanks.

Message

---

**From:** Wheeler, Andrew R. [Andrew.Wheeler@FaegreBD.com]  
**Sent:** 4/13/2018 11:57:23 PM  
**To:** Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]  
**Subject:** Re: Congratulations

Thank you, I have to say, it wasn't easy hanging in there. I am however looking forward to getting started.

Sent from my iPad

> On Apr 13, 2018, at 6:21 PM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

>

> I'm thrilled with your confirmation. Thanks for hanging in there.

>

>

> \_\_\_\_\_

> Bill Wehrum

> Assistant Administrator

> Office of Air and Radiation

> U.S. Environmental Protection Agency

> Ex. 6